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# THE CONSTITUTIONALITY OF MAKING THE BREACH OF A LABOR CONTRACT CRIMINAL.

There is a section of the code of Alabama<sup>1</sup> which reads in part: "Any person, who with intent to injure, or defraud his employer, enters into a contract in writing for the performance of any act or service and thereby obtains money or other personal property from such employer, and with like intent and without just cause and without refunding such money or paying for such property, refuses or fails to perform such act or service, must, on conviction, be punished by a fine in double the damage suffered by the injured party, but not more than three hundred dollars, one-half of said fine to go to the county and one-half to the party injured; \* \* \* And the refusal of any person who enters into such contract to perform such act or service, \* \* \* or refund such money \* \* \* without just cause, shall be *prima facie* evidence of the intent to injure his employer \* \* \* or to defraud him."

One A B had contracted to serve R with manual labor for a year. At the time of signing the contract he was given fifteen dollars and immediately thereafter began the performance of his contractual obligations. The understanding was that some time during his term of service the fifteen dollars were to be returned. Weekly advances were given him as he performed his labors. After he had served a short time he left the employment of R without making restitution of the fifteen dollars. He was indicted under the statute quoted. In *habeas corpus* proceedings, he contested the constitutionality of the act but it was ruled against him. This decision was affirmed by the Supreme Court of Alabama.

The appeal to the Supreme Court of the United States was dismissed in *Alonzo Bailey v. Alabama*<sup>2</sup> on the ground that the constitutional question could not be reviewed on an appeal from *habeas corpus* proceedings, that the cause was prematurely appealed.<sup>3</sup> At the final hearing A B was duly convicted by a jury in the City Court of Montgomery, Alabama, on February 18, 1909, from which verdict he has appealed to the Supreme Court of the State.

He contends that the statute is unconstitutional (1) because it amounts to a deprivation of liberty without due process of

<sup>1</sup> Code of Alabama, 1907, Vol. III, § 6845.

<sup>2</sup> 29 Sup. Ct. Rep. 141 (1908).

<sup>3</sup> Harlan, J., dissents, believing that the constitutionality of the statute should have been passed upon.

law,<sup>4</sup> (2) in that it in effect is a species of involuntary servitude, (3) in being a violation of the peonage statute.<sup>5</sup> He rests his argument on the first ground on the fact that the local courts, in applying the *prima* rule of evidence in the statute, refuse to hear testimony of what was actually the state of the defendant's mind when the money was received or the contract broken.<sup>6</sup> It may well be that as a matter of expediency he may not be permitted to state the condition of his mind, but will be confined to the introduction of facts which explain his breach of contract to be bereft of the intention required by the statute for conviction. Such refusal, in itself if applied to similar conditions where the state of a man's mind is in question, could scarcely be attacked as a denial of "due process of law." That the shifting of the burden of proof by a statutory presumption, so long as it is reasonable, is constitutional is generally recognized.<sup>7</sup> Nor does the erroneous administration of a statute make the statute any the less constitutional.<sup>8</sup>

The second contention is that by the rigidity of the statute one is forced to undergo involuntary servitude through fear of incurring the penalty for the breach of the contract, and that the punishment itself partakes of the nature of a forced condition of servitude. That the thirteenth amendment was meant to cover more than mere slavery is evident from the language itself. Involuntary servitude covers every form of subjection,<sup>9</sup> such as the peonage service, the Chinese coolie labor system, or rites and customs peculiar to the Alaskan Indians. When an apprentice contract is inordinately harsh it may be held involuntary,<sup>10</sup> as may be a contract for the service of a minor child under conditions which abnegate consent.<sup>11</sup> Ordinarily, however, when a man has entered contractual obligations, of his own motion, he cannot plead a deprivation of his constitutional rights in this respect.<sup>12</sup> In exceptional cases such as the seamen

<sup>4</sup> Federal Constitution, Section 1 of 14th Amendment.

<sup>5</sup> § 1990 U. S. Comp. St., 1901, p. 1266.

<sup>6</sup> P. 141 of Holmes, J., opinion in 29 Supt. Ct. Rep.

<sup>7</sup> *Morgan v. State*, 117 Ind. 569 (1888); Wigmore on Evid., Vol. II, § 1354, pp. 1670-1672; *Banks v. State*, 124 Ga. 15.

<sup>8</sup> *Del. Lack. & West. R. R. v. Pa.*, 198 U. S. 341 (1905).

<sup>9</sup> Miller, J., in *The Slaughter Houses Cases*, 16 Wall. 36, 72 (1872); *In Re Sah Suah*, 31 Fed. 327 (1886).

<sup>10</sup> *Matter of Turner*, 1 Abb. (U. S.) 84 (1867); *Clark's Case*, 1 Blkf. 122 (Ind.) (1821).

<sup>11</sup> *U. S. v. Ancarola*, 1 Fed. 676 (1880).

<sup>12</sup> *Tyler v. Heidon*, 46 Barb. (N. Y.) 439 (1886) (a ground rent covenant).

contracts, men have even been forced to perform the services required by the shipping articles.<sup>13</sup> Every person entering into a contractual relation to a degree surrenders some of the personal freedom of which he is normally possessed, and economic pressure alone cannot usually be denominated involuntary servitude. A statute making a mere breach of contract a crime would be unconstitutional. However, under peculiar circumstances as the desertion on the part of seamen, or the abandonment of his duties by a train dispatcher, we have criminal acts, though in reality they are mere breaches of contract. A statute imposing the penalty of incarceration for the breach of a labor contract similar to the one in question, but without the requisite of intent to defraud or injure the employer, after being first upheld by the courts of South Carolina,<sup>14</sup> was finally declared violative of the constitutional inhibition in an exhaustive opinion.<sup>15</sup> It has always been a well recognized power of the State to pass laws punishing fraud springing from breach of contracts. Thus the courts have held that punishment of a debtor by imprisonment for unjustly and fraudulently refusing to apply money or property within his hands to the payment of a debt is not a violation of a statute prohibiting imprisonment for debt.<sup>16</sup> In Georgia and North Carolina<sup>17</sup> statutes, providing penalties for breaking labor contracts like the one in question were upheld on the ground of punishment for fraud. For the same reason a statute was sustained in Louisiana,<sup>18</sup> though it was admitted in the language of the court that if it were "an attempt on the part of the employer because of his laborer's indebtedness to compel him to continue to perform his daily task the result would in all probability be different." Punishment for fraud will therefore be upheld though it may tend indirectly to force a laborer, through timidity, to carry out his contract. Indeed, this has been the rationale of a decision upholding this very statute in an earlier Alabama case.<sup>19</sup>

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<sup>13</sup> *Robertson v. Baldwin*, 165 U. S. 273 (1897); *contra*, when the contract was not entered into voluntarily; *In Re Chung Fat*, 96 Fed. 202 (1889). Compulsion in working off a highway tax is not held involuntary; *Matter of Dassler*, 35 Kan. 684 (1886).

<sup>14</sup> *State v. Chapman*, 56 So. Ca. 420 (1899); *State v. Easterlin*, 61 So. Ca. 71 (1901).

<sup>15</sup> *Ex parte Hollman*, 60 S. E. 19 (So. Ca. 1908).

<sup>16</sup> *Ex parte Clarke*, 20 N. J. 648 (1846).

<sup>17</sup> *Lamar v. State*, 120 Ga. 312 (1903); *Banks v. State*, 124 Ga. 15 (1905); *State v. Norman*, 110 No. Ca. 484 (1892).

<sup>18</sup> *State v. Murray*, 116 La. 655 (1906).

<sup>19</sup> *State v. Thomas*, 144 Ala. 77 (1906).

In contradistinction we might mention an earlier statute in the same State which made it a misdemeanor for a person to break a contract and enter into a similar one with another employer without divulging his prior obligation.<sup>20</sup> That statute was declared unconstitutional, for it was a criminal punishment for a mere breach of contract. Let us consider the argument that it is a violation of the peonage statute. The basal fact of peonage is indebtedness.<sup>21</sup> Peonage in whatever manner it has its inception is involuntary. The peon must perform his labor to discharge his indebtedness. Until then he is bound absolutely and will be forced to perform the work as contracted. An ordinary contract of labor in discharge of a debt may be broken at any time and the breach will be satisfied by damages;<sup>22</sup> peonage is compulsory and involuntary service and can only be satisfied when the debt is absolved. Until then the peon's service may be sold or assigned to another and he is bound thereby to serve his new master. A statute which makes a mere breach of contract a criminal offense might very well be argued to militate against the spirit if not the letter of the peonage statute.<sup>23</sup>

There is at least one other plausible objection against the statute in question, namely, that it is a violation of the fourteenth amendment in that it is a "denial of the equal protection of the laws," in legislating against the breach of a particular kind of contract by one party to it. As it stands it would seem that an employer with the most consummate fraudulent intention might bind any number of laborers to him and then with perfect impunity break his contracts and be mulcted in damages only according to the rules of damages for breach of contract. However, the reasonableness of a discriminatory legislation which applies equally to all the members of a particular class, has upheld statutes which on their face seem unconstitutional.<sup>24</sup> The justification for statutes of this nature is given by Jones, J., in his dissenting opinion in *ex parte Hollman*,<sup>25</sup> in which he points out the lamentable consequences that would result if more drastic measures were not adopted

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<sup>20</sup> *Toney v. State*, 141 Ala. 120 (1904).

<sup>21</sup> *Jaremillo v. Romero*, 1 N. M. 190 (1857).

<sup>22</sup> *Clyatt v. U. S.*, 197 (L. E.) U. S. 207 (1905). See also language of Woods, J., italicized, in *Ex parte Hollman*, p. 24.

<sup>23</sup> Peonage Cases, 123 Fed. 671 (Ala. 1903).

<sup>24</sup> *Lochner v. New York*, 198 U. S. 45 (1905).

<sup>25</sup> 60 S. E. (1906, So. Ca.) at p. 33.

to prevent the promiscuous breach of contracts by dishonest laborers in these peculiar conditions.

It would seem therefore that the statute considered, in letter at least, falls within the pale of the constitutional amendments in question.

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#### CONVEYANCES ON A PAROL TRUST FOR THE BENEFIT OF A THIRD PARTY AS AFFECTED BY THE STATUTE OF FRAUDS.

Where A conveys property to B on the latter's parol promise to hold in trust for C, the problem whether or not the trust is enforceable against C when he repudiates it, in view of the Statute of Frauds, may be divided into two parts according as B's promise is made (1) *bona fide* or (2) with no intent to perform.

Where the parol promise is honestly made and later the trust is repudiated by B, he could not in justice be allowed to keep the subject matter of the trust. Neither should C be allowed to enforce the trust because this would be a complete abrogation of the Statute of Frauds;<sup>1</sup> but the contrary view has at least one decision in its favor.<sup>2</sup> B, however, is unconscionably holding property which belongs to the grantor A, and equity having jurisdiction to compel a return of the specific property should so decree.<sup>3</sup> This conclusion has been arrived at in several cases.<sup>4</sup>

Where there has been no fraudulent promise, but where B has been active in procuring the conveyance to himself,—and this activity may consist in “procuring a title from another which he [B] could not have obtained except by a confidence reposed in him”<sup>5</sup>—it has been urged that the case is different from a mere parol promise with no such activity.<sup>6</sup> It is submitted, however, that every such promise is an inducement of the conveyance; for without the promise the conveyance would

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<sup>1</sup> *Salter v. Bird*, 103 Pa. 436 (1883).

<sup>2</sup> *Smoke v. Smoke*, 11 Va. L. Reg. 747 (Va. Circ. Ct. 1906).

<sup>3</sup> See Note in 57 U. P. L. Rev. 403 (1909).

<sup>4</sup> *McKinney v. Burns*, 31 Ga. 295 (1860); *Peacock v. Peacock*, 50 Mo. 256, 261 (1872), dictum. Cf. *Rochevoucauld v. Bonstead*, L. R. [1897], 1 Ch. Div. 196; *In Re Davis*, 112 Fed. 129 (Dist. Mass. 1901).

<sup>5</sup> *Siechrist's App.*, 66 Pa. 237 (1870).

<sup>6</sup> A Treatise on Equity Jurisprudence, by J. N. Pomeroy, sec. 1055, Note a